LOS ANGELES BAR BULLETIN

In This Issue

L. 24 NOVEMBER, 1948 NO. 3

Los Angeles
BAR BULLETIN

Official Monthly Publication of The Los Angeles Bar Association. Entered as second class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price $1.00 a Year; 10c a Copy.

VOL. 24 NOVEMBER, 1948 No. 3

OF NATURAL LAW

By Walter L. Nossaman
President, Los Angeles Bar Association

(Concluded from the October issue)

President Nossaman

Natural law has no monopoly of the principle that good is to be done, and evil avoided (see October BULLETIN, p. 56). But a workable system of law must be able to translate its precepts into action. Here natural law fails utterly, and because its judgments are unpredictable, would fail even though supported by the power to enforce its commands. For its judgments would be subjective, reflecting the moral ideas of the judge, his personal views on economic and legal matters (see Salmond, Jurisprudence, 10th ed., p. 30; Pound, The Spirit of the Common Law, p. 95). This is the *Freirechtslehre*, the *Rechtsbewusstsein* (free-law doctrine, law-consciousness), to which continental jurists were tending even before the rise of the fascist tyrannies (Friedmann, Legal Theory, p. 9). From this point, it is only a step to that emphasis on instinct and feeling, rather than intellect and reason, which is characteristic of totalitarian theories (see Friedmann, p. 10).

A government of laws and not of men can exist only under a system of positive law. The basic freedoms guaranteed by the Bill of Rights are ours through positive law, adopted in opposition to political concepts generally prevailing at the time. Natural law is not law, *as law*. To recognize it as such would be to revive an "exploded superstition," and "to take a step back-

ward in Jurisprudence" (Gray, The Nature and Sources of the Law, 2d ed., p. 309).

It may be of interest to lawyers that natural law concepts have at times had an influence, not always explicit, in decisions of the Supreme Court of the United States. Aware that I am treading on controversial ground, and admitting the possibility of error, I suggest that this influence has not been in all respects fortunate. A few of the cases will be noted.

A liberty of contract, assumed to be inalienable, caused the Court to invalidate an act of Congress, unanimously approved by two Congressional committees and passed by both Houses almost without dissent, establishing a minimum wage law for women in the District of Columbia (*Adkins v. Children's Hospital*, 261 U. S. 525 (1923), followed in *Morehead v. New York*, 298 U. S. 587 (1936), overruled in *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937; opinion by Hughes, C. J.)). In the *Adkins* case, one of the women whose right to "contract" with her employer respecting the price for her services was held to be beyond the power of the government of the United States to regulate, was an elevator operator, in a hotel. This unrealistic decision is an illustration of the subjective and undisclosed, often unconscious, motivations which predetermine natural law judgments.

Other applications of natural law concepts to invalidate legislation are *Lochner v. New York*, 198 U. S. 45 (1901; state regulation of hours of labor in bakeries); *Burns Baking Co. v. Bryan*, 264 U. S. 505 (1923; regulation of weight of loaves of bread); *Adair v. United States*, 208 U. S. 161 (1908; Act of Congress making it an offense for an interstate carrier to discharge an employee because of membership in a labor union); *Coppage v. Kansas*, 236 U. S. 1 (1915; state statute making it unlawful to require employees not to join or remain a member of a labor organization).

In the *Coppage* case, holding the particular limitation on liberty of contract for employment an "arbitrary" exercise of state power, Justice Pitney says (p. 14) that "the right [to "contract" for employment] is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

(Continued on page 78)

McCLEAN REPORTS ON LEGAL EDUCATION SURVEY AND ADMISSION PROCEDURE

By Harry J. McClean, of Los Angeles
President, State Bar of California

Harry J. McClean*

THE State Bar of California has undertaken a comprehensive survey of the field of legal education including standards of admission and admission procedure. The survey will be made by a board of distinguished experts in the field of legal education. Joseph A. McClain, Jr., of St. Louis, General Counsel of the Wabash Railroad Company, former law school dean and professor of law, and long identified with the field of legal education in the American Bar Association, will be chairman of the board. The second member will be Thomas F. McDonald, of St. Louis, attorney. Mr. McDonald has to his credit a great record of achievement in the field of legal education and improved admission standards in the State of Missouri and has been active in the American Bar Association's work in the field of legal education. The third member of the board is Colonel Sidney Post Simpson of New York City. Colonel Simpson is in general practice and part-time lecturer in New York University.

The first step in doing this work was the preparation of an exhaustive questionnaire eliciting facts and statistical data from the law schools in California. The work of gathering this data is being conducted under the supervision of Col. Simpson and is in the immediate charge of his assistant Miss Marjorie Morrell.

The questionnaire which is being used has been characterized

*Harry J. McClean is President of the State Bar of California and a Past President of the Los Angeles Bar Association.

He received an A. B. from Stanford Univ. in 1916, and a J. B. from the School of Law, Univ. of Southern California in 1917.

He was admitted to practice in California in 1917. Before and after admission, he was part-time lecturer in the Department of Political Science and the Department of Sociology in the School of Liberal Arts, at the Univ. of Southern California. He was also part-time lecturer in Law in the School of Law, Univ. of Southern California, from 1920 to 1927.

Harry McClean has served on several committees of the American Bar Assn., including the special committee to secure enactment of the Federal Administrative Procedure Act. He also served on the Council of the Administrative Law Section, of the American Bar Assn.

as "the finest piece of work of its kind to date." The questionnaire has been in the hands of the deans of the law schools of California since September 1st and it is expected that this phase of the work will be completed by December following which the special board will commence its evaluation of the data developed by the questionnaire. The next step in the work will be a field investigation of physical factors and teaching technique made by the three members of the special board.

The board has also been instructed to make a careful study of and report its recommendation to the Board of Governors with respect to admission procedure under the so-called accreditation rule.

In 1933 the State Bar retained the services of Mr. Will Shafroth and Professor H. C. Horack to study and report on legal education in California. The result of this early survey was highly beneficial both to the law schools and the State Bar. It is confidently expected that the current survey will make a substantial and worthwhile contribution in the field of legal education and admission procedure in California and will serve as a pattern for other states seeking improvement in these fields.

The background of such survey is that in November, 1947, the Board of Governors of the California State Bar appointed a Special Committee on Survey of Law Schools and Admission Procedures, composed of Arthur B. Dunne, Herbert Freston, Evan Haynes, Charles P. Knights, Fred E. Lindley, M. B. Wellington, and Harry J. McClean, Chairman.

This Committee was appointed to provide for the making of a survey by impartial, competent, non-resident persons of the entire problem of admission to practice law in California, including the present mode of administration of the Bar examinations, the character of the questions, the marking and reviewing of the papers, and the determination of the results of the examinations; the subject of legal education in this State, in its several phases, including the equipment, requirements, standards, educational policy, and the practices of the individual law schools, and the character and effectiveness of the instruction therein; and the effect, if any, upon the standards of legal education in this State of the method presently employed by the Committee of Bar Examiners for the accreditation of law schools, subject to the Board of Governors of the State Bar of California.

FEDERAL COURT CRIMINAL PRACTICE

By James M. Carter,
United States Attorney

James M. Carter*

IN THIS short article, no *detailed* discussion can be included concerning criminal procedure and practice in the Federal courts. It will be only possible to call attention to some of the instances where Federal practice and procedure deviates from the practice and procedure in State courts, and to outline some of the rules and policies of the United States Attorney's office. To the experienced practitioner in the Federal courts, the remarks will appear elemental; but to the young lawyer or practitioner who rarely appears in Federal court, the remarks may be of some value.

I. THE TOOLS OF ONE'S TRADE

The tools of one's trade in the Federal court can be briefly summarized. The majority of the criminal statutes appear in Title 18, U. S. Code, Secs. 1 to 929 (now Secs. 1 to 5037—Revised Title 18). However, criminal statutes appear throughout the entire 50 volumes of the U. S. Code. Caution should be exercised in the use of the index to the U. S. Code, because to find a given subject one must call upon the full range of his imagination to determine under what title the subject matter might be indexed.

*James Marshall Carter was born in Santa Barbara, California; he attended Grammar schools in Los Angeles County; and San Fernando High School; attended Pomona College from 1920 to 1924, graduating in June 1924 with an A.B. degree.

He attended Harvard Law School, 1924-1925, and the University of Southern California Law School from 1925 to 1927, graduating with a Degree of J.D.

He is a member of the Order of the Coif, and Phi Kappa Phi, National All-University Scholarship Society.

He was appointed by Governor Olson as Director of Motor Vehicles in 1940 where he served until 1943.

He entered the office of the United States Attorney and was appointed Chief Assistant U. S. Attorney in July, 1943. On August 9, 1946, he was appointed by President Truman as United States Attorney for the Southern District of California.

The above article is based upon an address given by Mr. Carter before the Hollywood Bar Ass'n prior to the revision of Title 18, U. S. Code, which became effective Sept. 1, 1948. "The revised title should be checked on any problem studied," stated Mr. Carter.

"Jim" Carter received international fame recently when he personally prosecuted the case against Tomoya Kawakita ("Meatball") for treason against the U. S., and secured the latter's conviction.

Reference should be made also to the *Rules of the District Court* effective January 15th, 1944. In Chapter 4 thereof, beginning on page 77, appear seven rules which are not extensive.

The recently adopted *Rules of Criminal Procedure*[1] for the District Courts of the United States supply a needed and workable tool. To these rules are appended notes of real value to the practitioner. A current set on Federal procedure, and one which has been found most accurate in its citations and text, is *"Cyc. of Federal Procedure, 2nd Edition."* Volume 9 thereof is a most workable handbook of criminal procedure. The practitioner should be familiar with the *"Federal Register,"* in which are printed all Executive Orders and Regulations and copies of which are maintained in the County Law Library and the library of the U. S. Attorney. *"The Code of Federal Regulations"* is a codification of the regulations of the various federal agencies and is grouped together roughly in titles according to subject matter; many of the matters appearing in the Federal Register eventually wind up in the Code of Federal Regulations.

"Federal Rules Decisions" is a compilation of cases involving applications of the Rules of Criminal Procedure as well as the rules of Civil Procedure in the Federal courts.

An article, *"Brief Guide to Federal Legal Bibliography,"*[2] in the Federal Bar Journal contains an excellent outline of the sources of legal reference material on federal matters, which will be helpful.

II. THE GRAND JURY

Grand Jury procedure varies from State practice in several ways. The grand jury meets each Wednesday and serves for a fixed term, one term running from the first Monday in February to the second Monday in September; another term from the second Monday in September to the first Monday in February. A challenge to the array of jurors or to the legal qualifications of an individual juror may be made[3] but must be made before the administration of the oath to the jurors and shall be tried by the court. Likewise, motion to dismiss the indictment may be based on objections to the array or to the lack of legal qualifica-

[1]Effective March 21, 1946.

[2]By Francis X. Dwyer, Gunhild I. Ness and Frederick K. Beutel; Federal Bar Journal Jan. 1945, Vol. VI, No. 2, pp. 170-205.

[3]Rule 6(b)(1) of Criminal Procedure.

(Continued on page 86)

Norman Sterry Reports on Broadcasting, Photographing, Televising Court Proceedings

Leader of Bar Excoriates Santa Ana Court for Permitting Broadcasting of Part of Celebrated Murder Trial

Norman S. Sterry*

NORMAN S. STERRY, of the Los Angeles Bar, stated to the conference of Bar Association delegates, during the State Bar Convention, at Santa Barbara, in September, that the question of courts permitting broadcasting or televising of court proceedings, "is of more importance to the due administration of justice than any question that has come before the State Bar of California since its integration."

Norman Sterry further reported as follows:

I think all of you will recollect that some months ago at the close of a celebrated murder trial in Santa Ana, the judge pre-

*Norman S. Sterry was born in Emporia, Kans., July 8, 1878, and lived there until 1892. He spent his summers at the headwaters of the Rio Grande, where he first acquired the taste, which has become almost a passion—of fly-fishing.

From 1892 to 1896 his father was general counsel of the Atlantic & Pacific Railroad, in Albuquerque, N. Mex. A wag has said it was called, "Atlantic & Pacific" because it didn't go to either ocean. In 1896 his father was appointed general counsel for the Santa Fe, for lines west of Albuquerque, with headquarters in Los Angeles, where the Sterry family then moved, and where Norman Sterry has resided ever since.

He attended the public school while in Emporia. The public school system in Albuquerque, however, was very poor in the 90's. The Univ. of New Mexico had just opened, and, although it operated as a University, it was really doing high school work. Thus, though of high school age, young Norman Sterry attended that University for four years.

Upon endeavoring to enter Stanford in 1896, he found that he was way ahead in some subjects and considerably behind in others. To make up for this, he was tutored by one Mr. Meany, a graduate of the Univ. of Virginia and of Christ College, Oxford.

In 1900, he entered Univ. of Michigan Law School. At Michigan, he was a substitute on the first football team Yost ever coached—his famous "point-a-minute" team.

In the spring of 1903, his father became very ill and Norman Sterry was compelled to leave the Univ. He was given a degree on his record; the second time that that had been done in the history of the University. It has been done once, since.

A degree of the University then entitled him to admission to the Bar in Michigan, and on the strength of that, he was admitted to the Calif. Bar on Oct. 20, 1903.

In the fall of 1903 he had a desk as a law clerk in the office of Bicknell, Gibson & Trask, at a salary of $0.00 per week (yes, those are all ciphers). That firm was later consolidated with Dunn & Crutcher, to form Gibson, Dunn & Crutcher. He is now a senior partner of the latter firm.

siding so far forgot himself and the necessity of maintaining the dignity of the courts as to permit the broadcasting of the closing proceedings of the trial when the jury returned with a verdict.

I think it is a mild understatement to say that the broadcast came as shock to every other judge in the State and to every member of the Bar. Following it the President of the Bar suggested that this Committee give consideration to a rule upon the subject, and after considering it we drafted, and, with the approval of the Board, suggested to the Judicial Council that it adopt the following rule—which I may say was based upon one of the Canons of Ethics of the American Bar:

> "The taking of photographs in the courtroom during court proceedings or during any recess between sessions, or the broadcasting, by radio, television or other method of any portion of a proceeding before the court shall not be permitted. The taking of any photograph, or attempt to take any photograph in the courtroom during the proceedings or during any recess between proceedings, or any broadcasting, or attempt to broadcast any of the court proceedings by radio, television, or other method, shall constitute a contempt of court, and shall be dealt with by the court as such."

At our meeting with the Sub-Committee of the Judicial Council we were very much surprised and disappointed to find the Judicial Council Committee was unwilling to incorporate such rule in its draft. One member of the committee even questioned the power of the Judicial Council to enact such a rule, on the ground that the authority of the Judicial Council was limited by the Constitution to the adoption or amendment of rules of practice and procedure.

We gave this subject very careful consideration. We were surprised to find there was a dearth of decisions on the subject. But the only cases considering it clearly sustained our contention that it is a matter of practice and procedure. In our report on pages 287 to 289, we have set forth and quoted from decisions of other jurisdictions wherein the judgments of trial courts holding newspaper reporters in contempt for taking photographs in or near the courtroom, after being directed by the court not to do so, had been sustained upon the ground that the taking of photographs in the courtroom or so near thereto

(Continued on page 82)

SHERMAN ACT AND "BIGNESS" IN BUSINESS

By Alfred Carr Ackerson*

Alfred C. Ackerson*
—By courtesy of
"Bench and Bar"

AN AVERSION against bigness in business has been a tradition in this country from its inception, yet with all this tradition, business has continued to expand into larger and larger integrated units with the passing of each decade of our history.[1] Even at the time of the Constitutional Convention, Thomas Jefferson and many other leaders of the time wanted a Constitutional provision absolutely prohibiting monopoly in any form or for any purpose.[2]

This traditional and strong sentiment against monopoly and the results of monopoly was in no wise lessened by the policies used in the development of many of our large industries prior to the turn of the century. By 1888 both major political parties included in their platforms a plank for legislation to outlaw the results of monopoly. Finally, in 1890, our anti-monopoly tradition culminated in the passage of the Sherman Antitrust Act by a predominantly Republican Congress. The spirit of the people at the time the Sherman Act was passed is illustrated by the words of Justice Harlan, who stated that the Sherman Act was passed at a time when it was felt that a new charter of freedom was required—a freedom from the "insidious menace inherent in large aggregations of capital, particularly when held by a corporation."

It is apparent from an examination of the decisions under the Sherman Act that the vast majority of the cases have been concerned with violations of Section 1, relating to agreements

[1]Competition and Monopoly in American Industry, T.N.E.C. Monograph No. 21.
[2]The Writings of Thomas Jefferson, Letter to James Madison, August 28, 1789.

*Alfred Carr Ackerson served ten years as Special Assistant to the Attorney General of the United States in the Antitrust Division of the United States Department of Justice, the last four years having been spent in the Los Angeles office of the Antitrust Division.

He attended the University of Utah and Georgetown University Law School. He is a member of the Bar of the District of Columbia and was admitted to practice in the State of California in 1940. Upon his resignation from the Department of Justice in 1944 he returned to private practice in Los Angeles.

and conspiracies to restrain commerce, rather than Section 2, involving the anti-monopoly provisions of the Act. This can be attributable to many factors, some of which may be related to the difficult administrative policies and problems involved in the usual monopoly case. The more obvious reason, however, appears to be the fact that Section 1 lends itself to many more situations than does Section 2. For this reason we find that practically all the recognized forms of restraining competition have been broadly and effectively condemned as being illegal *per se* under Section 1 of the Act.

Thus price stabilization, territory or business quota allocation, or, in fact, any plan which restrains the free play of competitive forces in the manufacture, sale and distribution of goods in the market place has been condemned, and without regard to economic necessity or justification for the restraint, and without regard to the alleged economic reasonableness of the plan condemned or the good intentions of those participating in the plan. The decisions under this section leave little doubt that the bare existence of the power to restrain without more is condemned by the Act.

RELUCTANT TO CONDEMN MONOPOLIES

In contrast to the judicial vigor displayed by the Courts in matters of restraint, the cases indicate that the same courts have been most reluctant to condemn monopolies as such. The difference in approach has probably been attributable to the fact that in applying the monopoly section of the Act the court was confronted with a tradition equally as strong as our aversion to monopoly, namely, the tradition of free enterprise as it relates to the right of the individual. This latter tradition found expression in the District Court opinion in the *International Harvester case*,[3] where the court stated: "There is no limit under the American law to which a business may not independently grow."

This latter language constitutes a part of the broader doctrine, to the effect that mere size and the existence of unexercised power do not constitute an illegal monopoly under the Act. The origin of this doctrine is traceable to the early monopoly cases coming before the Supreme Court, in which

[3]*U. S. v. International Harvester Co.*, 274 U. S. 693.

(Continued on page 91)

Administrative Agencies and Tribunals Committee Reports at Convention

C. E. McDOWELL* (left), chairman, and EUGENE M. ELSON,** southern section vice chairman, of the Administrative Agencies and Tribunals Committee of the State Bar.

EUGENE M. ELSON, of the firm of Howlett and Elson, Los Angeles, and Vice Chairman of the Southern Section of the State Bar Committee on "Administrative Agencies and Tribunals," presented to the State Bar Convention in Santa Barbara, in September, the report of that committee, and in his address to the Convention Mr. Elson gave the highlights of such report.

The report of that committee was prepared by its chairman, C. E. McDowell, of the firm of Faries and McDowell, Los Angeles. Mr. McDowell could not attend the convention at Santa Barbara, since he was traveling in France and Switzerland, so the report was presented by Mr. Elson.

(Continued on page 80)

*C. E. McDowell graduated from Princeton Univ. in 1910. He was admitted to practice in California in Jan. 1912, and graduated from U. S. C. College of Law in June, 1913. He has been practicing in Los Angeles since then.

He practiced alone until 1937, when he entered into partnership with David R. Faries, which lasted until the latter's death in June, 1944. Since then Mr. McDowell has been practicing law with McIntyre Faries, brother of David R. Faries.

C. E. McDowell has served as a member of the Board of Trustees of the Los Angeles Bar Assn. and as chairman of its Committee on Administrative Boards and Agencies, and for the last two years has been chairman of the State Bar Committee on Administrative Agencies and Tribunals. He is now chairman of the Los Angeles Bar Assn. Committee on Constitutional Amendments.

He is a member of Phi Delta Phi legal fraternity and also of Phi Beta Kappa.

**Eugene M. Elson, Vice Chairman of the Southern Section of the State Bar Committee on "Administrative Agencies and Tribunals," is a native Californian. He attended Los Angeles High, the University of Calif., at Berkeley, and graduated from Southwestern Univ. College of Law, with the Degree of LL.B. (cum laude), in 1930, and later served as an instructor of law at that institution.

He was admitted to practice in 1930, and became a junior partner of Pease, Dolley & Elson. In 1933, he was appointed Deputy Attorney General of California by U. S. Webb, and served as such until May, 1944, acting principally as one of the chief trial deputies.

He was then associated with Musick, Burrell & Pinney until December, 1945, when Elmer H. Howlett and he formed the partnership of Howlett and Elson, and they have been so associated ever since.

He has been active in State and Los Angeles Bar activities, especially as a member of the Administrative Law Committees of those associations. One of such committees of the State Bar was concerned with disciplinary matters.

Silver Memories

Compiled from the Daily Journal of November, 1923
By A. Stevens Halsted, Jr., Associate Editor

A. Stevens Halsted, Jr.

The name of the successful applicants for the post of county counsel, assistant county counsel and deputy counsel will be announced soon, following the results of the civil service examination. **Edward T. Bishop,** the incumbent, received the highest rating, or 90.78%. He is followed by **R. W. Dowds** with 84.66%. **E. W. Matoon** was third with a marking of 79.77%. County Counsel will be appointed from one of these three high men.

* * *

The public debt of the United States has been reduced nearly a billion dollars during the past year, the Treasury Department announced. The total debt is now about $22,000,000,000.

* * *

William C. Mullendore, assistant to Secretary of Commerce, Herbert Hoover, is in Los Angeles on a vacation trip. Mullendore is making an unofficial study of the oil and commercial development in the Southland for the Department of Commerce. Mr. Mullendore is not a stranger to California. Though not a native Californian, he has visited the state several times with Secretary Hoover. He accompanied the Secretary of Commerce on his two trips to California as Chairman of the Colorado River Commission, and has been in close touch with the proposed Boulder Canyon Dam project. He also accompanied Secretary Hoover and President Harding on the ill-fated Alaskan trip of the past summer.

Courts-martial are being conducted in San Diego involving the cases of eleven naval officers accused of negligence in the performance of duty in connection with wrecking seven United States destroyers last September 8 off Point Honda.

* * *

The Farm Bureau Federation voted unanimously to submit to the voters an amendment to the State Constitution limiting the representation of the populous centers. The suggested amendment would retain representation on the bases of population in the Assembly, but would limit the number of Senators by providing that no county could have more than five. At present Los Angeles County has eight and San Francisco seven.

* * *

Plans are being made for the annual meeting of the American Bar Association in London next July. It is planned to have the members of the Association and their families sail for England on the Berengaria of the Cunard Line. The visit has been timed so that the American lawyers may have an opportunity of seeing the British Courts in action and of getting an idea of British procedure in practice.

* * *

Prohibition agents have no right to search an automobile without a warrant or substantial evidence that it is carrying liquor according to a decision by United States District Judge Partridge.

* * *

The California law forbidding employers to exact pledges from employees not to join labor unions was held void in a decision handed down by the United States Circuit Court of Appeals. The opinion affirmed the decision of the United States District Court of Los Angeles which enjoined labor unions from organizing the nonunion workers of the Pacific Electric Railway Company in Los Angeles.

* * *

A Federal Sales Tax has been suggested by Secretary of the Treasury Andrew Mellon as a means of paying the soldiers' bonus and still effecting a reduction of taxes.

(Continued on page 95)

OF NATURAL LAW

(Continued from page 66)

The conclusion, which will be conceded, does not seem necessarily to follow from the premise, nor to render wholly capricious a finding by the law making authority of the state that an inequality in some degree *could* have existed between the switchman, Hedges, and the railroad company.

Some will think that *now* the inequality is the other way, and that perhaps the railroad needs protection from the switchman. If so, the existence of the fact should be a matter for determination, first by the legislature and finally by the courts, without assuming *a priori* and on the basis of a hypothetical natural law, that all men and organizations of men are equal in bargaining power.

Anyone interested in further investigating the influence of natural law on Supreme Court decisions will find the cases up to about 1930 collected in Professor Haines' book, The Revival of Natural Law Concepts (Harvard University Press, 1930). It should be noted that numerous cases in the Supreme Court in the past few years have vindicated various individual rights, not because they are appurtenant to a state of nature, but because being embodied in the Constitution, they have acquired the sanction of positive law.

In these papers, I have objected to considering so-called natural law as though it were law. Naturally, no objection is made to the introduction of ethical concepts into the law (see Haines, *supra*, p. 310). The impulse which created the fiction of natural law (Pound, Interpretations of Legal History, p. 133) may cause it to serve as an ideal (Bryce, Studies in History and Jurisprudence, p. 579) through which the "spirit of honour, good faith and equitable fairness" (*id.*, p. 591) which should permeate all legal systems may be promoted. The conclusion of the whole matter, as I see it, is that the law and the administration of justice will be advanced only by conscious effort to improve the positive law, and the agencies that administer it. The positive law which we create or suffer to exist will determine whether our earthly sojourn is tolerable. There is no mystery about that law. We know whence it comes, and that in origin it is like—in large part, it is—the common law of which Justice Holmes said that it "is not a brooding omnipresence in

the sky, but the articulate voice of some sovereign or quasi-sovereign that can be identified;" (*Southern Pacific Co. v. Jensen*, 244 U. S. 205, 222).

If there seems to be any interest in these topics, I shall discuss briefly in subsequent issues of this journal the sources of law, and the place of the lawyer in the development of legal systems.

Administrative Agencies and Tribunals Committee Reports at Convention

(Continued from page 75)

Mr. Elson first called attention to the Code of Ethics for Administrative Officials, which was originally prepared during the year that Harry McClean was chairman of the committee.

This Code was prepared after numerous conferences with such officials and was finally approved by them. Then the proposed Code was submitted to Governor Earl Warren, who had some objections to it. A revised Code was thereupon drafted to meet his objections. The revision was then approved by Governor Warren, which was then submitted to the Judicial Council and it is expected that it will shortly be approved.

The committee's report on the salary adjustment program for hearing officers in the Division of Administrative Procedure, Department of Professional and Vocational Standards, was then called to the attention of the Convention. This, Mr. Elson emphasized, is a matter of considerable concern since their salaries are not comparable with those of other persons in state service occupying positions of equal importance.

It was also pointed out that if the matter is not remedied, extremely competent men who are now acting as hearing officers might be lost, and "we would find ourselves back in the old situation of having hearing officers who were totally unqualified to rule on the administrative matters before them."

C. E. McDowell, of Los Angeles, is chairman of the statewide committee on Administrative Agencies and Tribunals. The southern section of his committee comprises Vice Chairman Eugene M. Elson, Stephen M. Farrand, Francis Britton McConnell, Richard A. Perkins and Syril S. Tipton.

Norman Sterry Reports on Broadcasting, Photographing, Televising Court Proceedings.

(Continued from page 72)

as to interfere with the orderly proceedings of the court was a matter of practice and procedure. Certainly if a single court can make such a rule, then under the authority granted to the Judicial Council by the Constitution it may make a rule upon that subject for all of the courts.

SHOULD RULE BE PROMULGATED?

The next question then is, having the power to do so, should the Judicial Council promulgate such a rule?

Mr. Chairman and Delegates, I do not think there is any member of the Bar who for one moment would answer that question other than in the affirmative.

You will note that there are two activities banned by the proposed rule, one the taking of photographs in court, the other broadcasting and televising court proceedings. While the same principles are applicable to both activities, I desire to consider them separately.

The taking of photographs in court has become rather a common occurrence, but that is no reason why its continuance should be permitted.

I want to ask you all to stop and remember that the courts represent the state in all its majesty and power. You will recollect that in the early days the king was supposed to have divine power and to be the sole arbiter, not only of the life and liberty, but of the civil rights of his subjects. All civil controversies were brought before him. Soon he found he had to delegate this power to others. In England that delegation was first to the Chancellor and then to the courts which were created by acts of Parliament. In this country they have been created by our constitutions and statutes. They represent, as truly as the English courts, the majesty of the state. That their proceedings should be conducted with solemnity and dignity goes without saying.

I think all men will agree that a republic cannot long endure unless its judiciary has the respect and confidence of the body politic.

Permitting court proceedings to be televised or broadcast, the same as a horse race, a baseball or football game, a boxing

match, or other athletic contest, cannot but detract from their dignity and from the respect which should be accorded them by the public.

RESENTED PHOTOGRAPHS IN COURTROOM

While, as I have stated, the taking of photographs in the courtroom is a somewhat common practice, I have always resented the fact it was permitted. It must be borne in mind that most witnesses are brought to court unwillingly, by the compulsion of a subpoena. As a matter of fact, that is generally also true of litigants. A person who believes that he has suffered an injury which the other party will not remedy has no choice but to go to court for his redress. A defendant who is sued must, of course, come into court to defend the suit.

To me it is a shocking thing that parties and witnesses thus forced, many of them unwillingly, into court should be subjected to the ordeal of having their pictures taken if it be against their will. Anyone who rightfully or wrongfully has been charged with a criminal act must object to having his photograph published, often manacled, often looking through the bars of a jail. Especially must this be true where they know they are innocent and hope to be able to establish that fact.

For these reasons, I feel and I believe most lawyers agree with me that photographs should not be permitted in the courtroom. However, I am perfectly frank to admit that in my opinion the taking of them does not have the same inimical effect that I believe broadcasting or televising a court proceeding would have. As I said before, the attempt to broadcast or televise court proceedings is to bring courts down to the level of some sporting event.

It has been suggested that the rule is one for adoption by each individual court. I do not agree with that. Where one weak judge or a judge who feels he wants to curry the favor of the press so as to get publicity for a coming campaign permits the taking of photographs in his courtroom, or broadcasting or televising the proceeding in his court, it is going to be very difficult for a judge who does not believe in such practice to refuse to permit it. He is constantly meeting the statement that "Judge Blank permitted it."

While, fortunately, there has been but one attempt in California and, I believe, in the entire nation, to broadcast court proceedings and none yet to televise, still if such practice is not stopped at its inception it is liable to grow. As we have stated in the report well-known lines of Alexander Pope seem most appropriate:

> "Vice is a monster
> Of so frightful mien
> As to be hated needs but to be seen.
> Yet seen too oft, familiar with her face,
> We first endure, then pity, then embrace."

Mr. Chairman, I move the adoption of the report of the Rules Committee and further that in adopting it the conference of the Bar delegates of the State Bar of California respectfully, but as earnestly as possible, request the Judicial Council to adopt the rule we have suggested and advise the Judicial Council that in the opinion of the lawyers of California the promulgation of that rule is necessary to maintain the dignity and respect which is now accorded to the courts of this state. (The motion was seconded and unanimously adopted.)

(Next month Mr. Sterry's report on recovering the entire cost of printing briefs on appeal and master calendars for small courts, will be printed.)

INTERESTED IN SMUGGLING?

Are you interested in smuggling? That is, in the *prevention* of smuggling? If you are, will you prepare a paper on it, to be presented at the Sixth Conference of the Inter-American Bar Association, to be held in Detroit, May 22 to June 1, 1949?

That Association is an organization established in 1940 representing lawyers in the United States and the Latin American republics. George Maurice Morris, a former president of the American Bar Association, is chairman of the Executive Committee.

If you are interested, contact William Roy Vallance, Secretary-General of the Association, 1129 Vermont Ave., Washington 5, D. C., or contact Bruno Newman, chairman of the Los Angeles Bar Assn. Committee for the reception of delegates to the Detroit conference.

FEDERAL COURT CRIMINAL PRACTICE

(Continued from page 70)

tions of the individual juror.[4] Proceedings before the grand jury are secret.[5]

There is no right on the part of any person to appear and testify before the grand jury, but in special instances this privilege may be accorded upon application to the foreman of the grand jury. The application should contain only a request; no defensive matter should be included. Its inclusion might be considered an attempt to influence the grand jury.

Contrary to State practice, the transcript of proceedings before the grand jury is not made available to a defendant, nor can he obtain it. The grand jury transcripts, however, may be used by the prosecution for the purpose of refreshing the memory of a witness, contradicting or impeaching a witness; and in the event of such use only that portion of the transcript so used is available for inspection by the defense counsel.

Since the evidence before the grand jury upon which the indictment is based is not available to a defendant, there is ordinarily no attack available as in the State court on the ground that the evidence was insufficient to justify the indictment.[6]

[4]Rule 6(b)(2) of Criminal Procedure.
[5]Rule 6(e) of Criminal Procedure.
[6]See *Olmstead v. U. S.*, CCA 9, 19 F. (2d) 842; aff. 277 U. S. 438. *Phelps v. U. S.*, CCA 9, Mar. 10, 1947, 160 F. (2d) 626.

Although there are three divisions within the Southern District of California, whose terms of court run for different periods, one grand jury empaneled in the Central Division sits for the entire district, returning indictments laid in various divisions. Similar procedure elsewhere has been held proper.[7]

Since 1943 men and women both serve on federal grand and petit juries in this District. Prior to that date there was an intentional exclusion of women. The Supreme Court recently reversed a conviction in a case[8] arising in this District prior to 1943, where objection was seasonably made in the trial court to such exclusion. Probably no other cases with such latent defect, are pending in this district. As to defendants now serving sentences whose term for appeal has expired, the writ of habeas corpus is not available,[9] since a grand jury panel must be seasonably attacked by motion to dismiss or similar motion.[10]

[7] *Salinger v. Loisel*, 265 U. S. 224, at 235.
[8] *Ballard v. U. S.*, 329 U. S. 187, 190.
[9] *Redmon v. Squier*, CCA 9, 5-16-47, 162 F. (2d) 195. See also—18 U. S. C. 556a (now 18 U. S. C. 3288, 3289).
[10] Rule 6(b)(1) & (2). See *Dean v. U. S.*, CCA 9 (July 30, 1948), ... F. (2d) ....., where the question was raised on motion to vacate a judgment entered in 1933. Motion denied. Affirmed on appeal.

III. UNITED STATES COMMISSIONERS AND THEIR HEARINGS

Criminal proceedings may be instituted by the filing of informations or by the return of indictments. In neither instance is a hearing before the Commissioner required. Criminal proceedings may also be instituted by filing a Complaint before a U. S. Commissioner, charging, in simple language, the commission of a federal offense. The defendant is entitled to be brought immediately before the Commissioner, who arraigns him, advising him of the charge against him and fixes bail.

The Commissioner then fixes a hearing date sufficiently in advance to allow the grand jury to meet first and consider the case. Preliminary hearings are not conducted, as a rule, before the U. S. Commissioners in the District. Accordingly, either an indictment is returned prior to the hearing date, a continuance requested or the Complaint dismissed before the Commissioner. There is no right to counsel before the Commissioner. It is an *ex parte* proceeding.[11] Commissioners have power to try petty offenses[12] occurring on federal reservations, where the penalty does not exceed imprisonment for six months or a fine of more than $500 or both. Defendant must consent in writing to be tried before the Commissioner. A set of rules of procedure for trials before a Commissioner and for appeal to the District Court are contained in the Code.[13]

IV. ARRAIGNMENTS

The steps on arraignment and plea are generally similar to State practice with the following exception: (1) A plea of *nolo contendere*[14] may be entered with the permission of the court. The plea means literally "I do not desire to contest" the action. It is for all purposes the same as a plea of guilty except it does not constitute an admission of the facts contained in the indictment or information. This is sometimes important in connection with an accompanying or subsequent civil action. (2) The plea of "Not guilty by reason of insanity" is not known in the Federal practice. The defense of insanity is made under the plea of not guilty.

Arraignments in the District Court are conducted on Mon-

[11] *Burail v. Johnston, Warden*, CCA 9, 12-12-44, 146 F. (2d) 230.
[12] 18 U. S. C. 576 (now 18 U. S. C. 3401).
[13] 18 U. S. C., following 576a (now 18 U. S. C. 3402).
[14] Rule 11. For a discussion of the plea of *nolo*, see *Hudson v. U. S.*, 272 U. S. 451.

day morning in the courtroom of the Judge who is handling the criminal calendar for the particular three months period. By office rule, the arraignments of defendants in custody are placed on the calendar for the Monday morning immediately succeeding the return of the indictment or the filing of the information. The arraignments of defendants who are on bail are placed on the calendar for the second Monday succeeding the return of the indictment or the filing of the information; an additional period of a week being allowed for the purpose of transmitting by mail to the defendant and his surties a notice of the time and place of arraignment.

Recent Supreme Court decisions[15] as well as the new Rules[16] have made crystal clear the right of the defendant to counsel at all stages of the prosecution following the filing of an indictment or information. In a recent case the defendant had counsel at all stages except upon sentence. HELD: Case remanded for resentence but conviction not affected.[17]

[15] *Powell v. Alabama*, 287 U. S. 45; *Tomkins v. Missouri*, 1-8-45, 323 S. Ct. 485; *Williams v. Kaiser, Warden*, 1-8-45, 323 S. Ct. 471.
[16] Rule 44.
[17] *Wilfong v. Johnston, Warden*, CCA 9, 6-26-46, 156 F. (2d) 597.

Although a defendant may waive his constitutional right to counsel[18] all the judges insist that a clear record be made giving the defendant his right to counsel if he desires same. Certain of the judges require the appointment of counsel in every instance.

The Los Angeles Bar Association maintains a very efficient committee under the chairmanship of J. E. Simpson, to furnish legal aid to indigent defendants in the Federal court. Two lawyers, one experienced and one a young member of the Bar, are present each Monday to receive the assignment of these cases.

It is ordinarily the practice of the District Court judges at the time of arraignment to permit counsel a continuance on the matter of plea to enable him to prepare and file whatever motions he may desire to make. In the ordinary case this extension does not exceed a week and only in important cases involving a great deal of work and preparation will lengthy extensions be granted for this purpose.

V. SEARCHES AND SEIZURES—MOTION TO SUPPRESS

The motion to suppress evidence unlawfully seized or obtained in violation of the U. S. Constitution is a useful weapon of the defense. Rule 41 of the Rules of Criminal Procedure outlines the procedure for obtaining a search warrant. A warrant may be issued to search for, and seize, property, (1) stolen or embezzled in violation of the United States; or (2) designed or intended for use or which is or has been used as the means of committing a criminal offense; or (3) possessed, controlled or designed or intended for use or which is or has been used in violation of the Act of June 15, 1917 (18 U. S. C. 98).[18a] The new rule on criminal procedure is a restatement of existing law and practice except that it does not modify other statutory provisions allowing searches and seizures.[19]

Generally speaking, a search may not be made to secure evidence to convict a person of a crime.[20]

The search is generally limited to (1) stolen goods; (2) property forfeited to the Government; (3) property concealed to avoid payment of duties; (4) counterfeit coins, burglary tools, gambling paraphernalia and illicit liquor.[21]

---

[18] *Johnson v. Zerbst*, 304 U. S. 458.
[18a] Now 18 U. S. C. 11, 957.
[19] See notes to Rule 41, Rules of Criminal Procedure, Subdiv. G.
[20] *U. S. v. Lefkowitz*, 285 U. S. 452, 454, 465-66; *Takahashi v. U. S.* (CCA 9), 5-21-44, 143 F. (2d) 118.
[21] *U. S. v. Lefkowitz*, 285 U. S. 452, 454, 465-66.

The motion to suppress is made in the criminal proceeding if an indictment or information has been filed; but may be made prior to the filing of an indictment or information by a motion in the district court.[22] Under the old rule the motion, prior to indictment, could be made before a U. S. Commissioner.[22a]

The motion to suppress may be made either in the district where the evidence was seized or in the district where the trial will be held.[23]

The Second Circuit in a novel decision[24] by a divided court[25] held that a motion to suppress an *illegally obtained confession* might be made and heard prior to trial, in like procedure as a motion to suppress *illegally seized evidence*. The person making the motion must be the owner of the property which has been seized and must so allege.[26]

A sole or majority stockholder is a different entity from the corporation and cannot prevail in a motion to suppress seized corporate records.[27]

(To be continued)

[22]Rule 41e (see note).
[22a]*Freeman v. U. S.* (CCA 9), 5-21-46, 160 F. (2d) 69.
[23]Rule 41(e).
[24]Application of Fried, 68 Fed. Supp. 961.
[25]Augustus N. Hand, dissenting.
[26]*Lagow v. U. S.* (CCA 2), 66 Fed. Supp. 738; aff. by Cir. Ct. 12-6-46, 159 F. (2d) 245; *Contra U. S. v. Janitz*, 6 F. R. D. 1, in which an appeal has been taken to the Third Circuit and is now pending.
[27]*Lagow v. U. S.* (see note 5).

SHERMAN ACT AND "BIGNESS" IN BUSINESS

(Continued from page 74)

there was not only size and power, but in some cases most flagrant abuse of power on the part of the monopolists.[4]

Since in both the Standard Oil and American Tobacco cases the court was dealing with aggravated abuses of power and aggravated methods of acquiring such power, it might be assumed that the abuse theory grew out of pure dictum in so far as these two cases are concerned, since such a holding was unnecessary to the decision in either case. In even earlier cases, however, the court displayed a marked unwillingness to call a monopoly illegal in the absence of fraud and abuse.

Be that as it may, in the later case of United States v.

[4]*Standard Oil Co. of N. J. v. U. S.*, 221 U. S. 1 (1911); *U. S. v. American Tobacco Co.*, 221 U. S. 106 (1911).

United States Steel Corporation,[5] the court seems to squarely embrace the abuse theory as a basis for its decision in the case, and this pronouncement has been reiterated and generally followed in subsequent cases coming before the court. In the United States Steel case, which apparently followed the doctrine of abuse, the monopoly charged involved only fifty per cent of the industry. The apparent general acceptance of the abuse theory in monopoly cases, however, has not been without protest and judicial disagreement, as will be hereinafter pointed out.

A mere reading of the two sections of the Act discloses no basis for distinction as to scope or breadth of application. Section 2, by legislative history and by judicial pronouncement relating to the purposes of the Act, would seem to warrant the same rigorous application to restraints capable of being effected by a closely knit integrated combination or corporation as has been applied to loosely knit agreements and conspiracies under Section 1, where the courts have uniformly condemned the mere existence of the power to restrain without more.

QUANTITY OF COMMERCE NOT CONTROLLING

Nor has the quantity of commerce affected been a controlling factor under Section 1 cases, except in so far as the quantity of commerce may show the power to restrain. In United States v. Steers, 192 Fed. 1, eight defendants were indicted and convicted of conspiring to prevent one tobacco farmer from shipping his tobacco crop in interstate commerce. A further illustration is found in the decision of the court in United States v. Ameri-

[5]251 U. S. 417, 451 (1920): "But we must adhere to the law and the law does not make mere size an offense or the existence of unexerted power an offense. It, we repeat, requires overt acts, and trusts to its prohibitions of them and its power to repress or punish them. It does not compel competition nor require all that is possible."

can Column & Lumber Association, where a trade association which controlled only thirty per cent of the industry was prohibited from taking the same steps that a corporation or integrated combination could apparently take with impunity under Section 2 of the Act.[6] This apparent inconsistency in the courts' decisions interpreting the two sections of the Act has been said to have caused the merger of many companies into integrated combinations.[7]

As previously indicated herein, and in contrast with the rigorous application of the Act to restraint cases under Section 1, the decisions rendered concurrently by the courts in monopoly cases seem to embrace an entirely different concept, *i.e.*, that a monopoly, irrespective of its power to fix prices or otherwise restrain competition in the market place, will not be condemned unless either the exercise of the power or the manner of its achievement is considered to be abusive, unfair and oppressive.

Thus, in the case of United States v. E. C. Knight Co.,[8] a

[6]257 U. S. 377, 413-419.
[7]*Ibid.*
[8]156 U. S.

petition charging the acquisition of a large majority of the sugar refineries in this country by five sugar companies and certain individuals, for the purpose of obtaining complete control over the price of sugar, was dismissed for insufficiency. In United States v. Greenhut,[9] an indictment, charging a corporation and its officers with acquiring seventy-eight competing distilleries which produced seventy-five per cent of all distilled spirits manufactured in the United States and with selling this output at fixed prices, giving rebates to those distributors who purchased exclusively from the monopoly, was dismissed upon demurrer for insufficiency. It should be noted that the defendants in this case constituted the very whiskey trust which figured so prominently in the debates in Congress as a reason for the passage of the Sherman Act.

Similarly early interpretations of Section 2 could be multiplied. Only one other example, however, will be cited, since it involves what has been termed the most outstanding example of monopoly in existence in our country today. This reference is to the United Shoe Machinery Corporation, which controls practically one hundred per cent of all machinery used by the shoe manufacturing industry in the lasting and soling of shoes. In 1911 the officers of the company were indicted for conspiring to restrain and monopolize the shoe machinery industry. The District Court sustained a demurrer to the indictment and the Supreme Court affirmed.[10] Twice subsequently the Department of Justice attacked this monopoly, with similar results.[11] There were cases in which the Government apparently failed to show fraud, violence, espionage or other types of abusive acts in the acquisition and exercise of the monopolistic power. In those monopoly cases in which the Government has been successful, this type of abuse has been present in abundance, and from the latter cases has evolved a generally-accepted principle that power and size alone do not constitute a violation of the Act unless there has been an abuse of the power or an abuse shown in the means used to achieve the power.

[9] 50 Fed. 469.
[10] *U. S. v. Winslow*, 227 U. S. 202.
[11] *U. S. v. United Shoe Machinery Co.*, 222 Fed. 349.

(Continued in the next issue)

SILVER MEMORIES

(Continued from page 77)

The Treasury Department has just completed a study of 1921 income taxes with a view toward proposing changes in the law to Congress. The average salaried man bears a large burden of the actual tax, though the man of over one million dollars income pays as high as 63%. There were only 21 incomes over $1,000,000 in 1921, and there has been a greater proportionate falling-off in taxes from the wealthy since the war, than from the salaried class. Excess profits

taxes and war profits taxes accounted for nearly half of the corporation income tax in 1921. Of total income taxes in 1921 of $1,420,000,000, more than $719,000,000 came from individual taxes and $701,000,000 came from corporation taxes.

* * *

The City Council is considering prohibiting automobile camps in residential districts. Councilman Gregory has asserted that in some automobile camps, which he characterized as a menace to residential districts, families have established semi-permanent camps and shacks.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACTS OF CONGRESS OF AUGUST 24, 1912, AND MARCH 3, 1933

of LOS ANGELES BAR BULLETIN, published monthly at Los Angeles, California, for October 1, 1948.

State of California, County of Los Angeles.—ss.

Before me, a Notary Public in and for the state and county aforesaid, personally appeared Robert M. Parker, who, having been duly sworn according to law, deposes and says that he is the business manager of the Los Angeles Bar Bulletin, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1933, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—Los Angeles Bar Association, 1124 Rowan Bldg., Los Angeles 13, Calif.
Editor—Carlos G. Stratton, 707 Van Nuys Bldg., Los Angeles 14, California.
Managing Editor—None.
Business Manager—Robert M. Parker, 241 E. 4th St., Los Angeles 13, California.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.) Walter L. Nossaman, President, 631 Title Insurance Bldg., Los Angeles 13, California. Dana Latham, Secretary, 1112 Title Guarantee Bldg., Los Angeles 13, California. Frank C. Weller, Treasurer, 817 One Eleven West 7th St. Bldg., Los Angeles 14, California. Los Angeles Bar Association, 1124 Rowan Bldg., Los Angeles 13, California.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the twelve months preceding the date shown above is..... (This information is required from daily publications only.)

ROBERT M. PARKER,
Business Manager.

Sworn to and subscribed before me this 1st day of October, 1948.
[Seal]
MARGUERITE F. CRIPPS,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires January 3, 1952.